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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/752,134

01/06/2004

Abbas A. Alahyari

10,665A

3921

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12/07/2007

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EXAMINER

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ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

12/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/752,134
Filing Date: January 06, 2004
Appellant(s): ALAHYARI ET AL.

MAILED
DEC 07 2007
Group 3700

William W. Habelt

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 11, 2007 appealing from the Office action mailed May 14, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,357,767

Roberts

10-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 stand rejected under 35 U.S.C. 102(b) as being anticipated by Roberts. Roberts discloses the claimed invention, including the discharge velocity of the second air stream SC or TC being 1.4 times greater than the discharge velocity of the

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first air stream PC. For example, in column 9, lines 60-65, Roberts discloses that the first air stream PC has a discharge velocity range from 200 fpm to 250 fpm. In column 10, lines 8-10, he discloses that the second air stream has a discharge velocity range from 250 fpm to about 300 fpm. When the velocity of the first air stream is at the lower end of the range, and the velocity of the second air stream is at the upper end of the range, the ratio of the velocities is at least 1.4.

(10) Response to Argument

Appellant remarks that Roberts' disclosure teaches that the primary air curtain and secondary air curtain do not have constant velocities but rather have velocity gradients or ranges of velocities. He argues that the velocities of the air curtains are not constant but vary across the back and front of the air curtains. See the second half of page 10 of his brief. He states that Roberts cannot be read as to pick at random a particular discharge velocity for each air curtain that would satisfy the claimed limitation of the second discharge velocity being 1.4 times greater than the first discharge velocity. It is pointed out in this regard, that Roberts clearly discloses that the discharge velocities of the different air curtains are not the same. See column 9, line 60 to column 10, line 13. He further discloses that the discharge velocity of the innermost air curtain is less than that of the outermost air curtains. Thus, Roberts discloses the basic concept of Appellant's invention, which is that the outer air curtain has a greater discharge velocity than the inner air curtain.

Furthermore, Appellant fails to distinguish Roberts over his claimed invention. Claim 1, for example, does not patentably distinguish the claimed first and second

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discharge velocities over the ranges of discharge velocities of the first, second, and third air curtains of Roberts. When the discharge velocity of the first air stream is at the lower limit of 200 fpm and the discharge velocity of the second air stream is at the upper limit of 300 fpm, the ratio of the discharge velocities meets the present claim limitations. It is submitted that one of ordinary skill in the art would reasonably read Roberts in this manner.

It is further submitted that Applicant's invention would work the same as Roberts' display case. Rather than having a single discharge velocity for each of the air curtains 45 and 65, there would inherently be a range of discharge velocities for both air curtains. The portion of the slower air curtain 45 that is adjacent to the faster air curtain 65 would be faster than the opposite side of the air curtain 45 that is adjacent the display area 30. The portion of the air curtain 45 that is next to the display area 30 would be slowed by the shelves 18, for example. The portion of the air curtain 45 adjacent to the air curtain 65 would be caught up by the faster air curtain 65. Thus, there would necessarily be ranges of discharge velocities in Appellant's invention and not a single discharge velocity for each air curtain.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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